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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/705,152	11/02/2000	Martin Hering	17857.4	4568

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EXAMINER

COHEN, CURTIS A

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 12/26/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/705,152

Applicant(s)  
Hering

Examiner  
Curtis Cohen

Art Unit  
3634



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Oct 11, 2001
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 38-61 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 38-61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 38 48 and 53, the recitation of “facilitating an awareness of the entity” is indefinite for several reasons. First, it is unclear what element is being provided to “facilitates” the awareness of the indicia. How does the indicia, or any structure recited in the claim, perform the function of “facilitating?” Why doesn’t *any* indicia facilitate awareness of what ever it is the indicia states?

Second, the term “entity” is indefinite. It is unclear what element this term is supposed to represent. Applicant must either positively claim, or at least explain, which feature of the invention this term represents with specific reference to its support in the specification.

And lastly, how is one to determine what constitutes an “awareness?” The claim must specify the meets and bounds of the term “awareness” such that it can be determined whether or not the prior art teaches “an awareness” and if another invention infringes this term. Does

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merely looking at the turnstile arm “facilitate awareness?” How can one determined that the “awareness” is due to the indicia, and not to the natural response one’s midsection into the barrier? Note, applicant is reminded that the use of the term “awareness” in combination with “a person” may constitute a rejection under Section 101 since it is improper to positively recite a human being. If applicant is intending to positively recite “the person” in any of the claims, then applicant must consider this foreseeable rejection.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38-61 are rejected, *as best understood considering the indefiniteness of the claims as set forth in the Section 112 rejection above*, under 35 U.S.C. 103(a) as being unpatentable over Collins #3,913,717 in view of Barton #4,408,406. Collins teaches a turnstile including a housing 10 with an arm 26 rotatably carried by the housing. The arm 26 extends into the passageway of travel and contains a covering 12. The cover 12 is made from a transparent material. The coupling means is taught by collar 20 and the attachment member is taught by bolt 21. Collins lacks indicia on the inside of the transparent cover 12. Barton teaches that it is known to use a transparent material to display indicia along with teaching using end caps 24.

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Covering the indicia with transparent material allows the indicia to endure weather and to be handled by many people without excessive wear to the indicia. For this reason, it would have been obvious to one of ordinary skill in the art, to display indicia using a transparent sleeve. However, neither Collins or Barton teach that it is known in the art to provide the method of advertising as set forth in the claims. Since Collins and Barton teach all of the structural elements set forth in the claims, to use these elements in the recited method steps of claims 38-61 would have been an obvious expedient in the art to use the structure in the manner for what it was designed.

### *Response to Arguments*

Applicant's arguments filed October 11, 2001 have been fully considered but they are not persuasive.

Applicant implies at the top of page 5 of the Response that Barton is improperly applied because it fails to teach a turnstile (same art) or teach an "advertising indicia" (same particular problem) and, therefore, is improperly combined with Collins. Barton is properly applied as prior art. Barton is cited as a well known teaching of "displaying indicia" (see claim 38, line 2) regardless if it is advertising indicia or any other kind of indicia. The "indicia" aspect of the invention could be advertising or any other kind of indicia. As long as one can see the particular indicia, how one interprets the indicia, whether it be advertising or informative, is of little consequence. However, upon further examination and given applicant's remarks, the claims appear to be contradictory. Is the claim setting forth "advertising" indicia or "awareness of the

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entity" indicia. Hypothetically, when viewing a bumper sticker representing a professional sports team, would this be considered as "facilitating awareness" and/or "an advertising indicia?" Does all "indicia" have an inherent amount of "advertising" whether it be for sales or merely for informative purposes?

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Cohen whose telephone number is (703) 308-2106.

The fax phone number for this Group is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.



C. Cohen

December 18, 2001